IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 375 OF 2007

Shri Nimba Pandharinath Wani. ... Applicant.

V/s.

1. Shri Bhagat Changdeo Ingale

2. The State of Maharashtra. ... Respondents.

R.N.Gite for the applicant.

Ms.M.H.Mhatre, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 31st August, 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. This revision application is filed by the applicant to challenge the judgment and order dated 25th July, 2007 passed in Criminal Appeal No.7/2005 by the Fourth Ad-hoc Additional Sessions Judge, Nashik dismissing the appeal and thereby confirming the order dated 21st December, 2004 passed by Chief Judicial Magistrate, Nashik in Regular Criminal case No.534/2000, acquitting all accused persons under section 248(1) of Cr.P.C. of the offences punishable under sections 7(i), 2(ia)(a), 2(ia)(n) read with

sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 ("said Act" for short), however, convicting applicant- accused No.1 for the offence of contravening the rule 50(5) punishable under section 16 of the said Act and sentencing him to suffer simple imprisonment for three months with fine of Rs.500/-, and in default to suffer further simple imprisonment for 15 days.

3. The applicant- accused was the owner of M/s.Jogeshwari Milk Agency, Nashik. On 9th June, 1999, Food Inspector collected milk samples from the applicant. The said milk samples were sent to the office of Chemical Analyser (C.A.) for examination. As per the C.A. report the samples were not as per the standard prescribed in the said Act. It appears that the applicant and accused No.2 had purchased milk from M/s.Mula Agro Products Pvt.Ltd. of Bramhani, taluka- Rahuri of which accused Nos.3 to 6 were the directors. The applicant- accused had no licence as such complaint was lodged against the accused. As stated above, the learned Chief Judicial Magistrate, Nashik after recording evidence acquitted accused Nos.2 to 7, however, convicted applicant- accused No.1. Being aggrieved by the said order applicant preferred appeal to the Session Court. The learned Sessions Judge dismissed the appeal and confirmed the order of the learned Magistrate. The applicant has,

therefore, invoked revisional jurisdiction of this Court.

4. The only contention canvassed by the learned counsel for the applicant is that, the age of the present applicant is almost 67 to 68 years. He has lost his son. He has closed down his business and residing with his old wife. There is no other family member in his family to look after the interest of the family. He, thus, submits that the punishment be quashed and the payment of fine may be increased. He placed reliance on the judgment of the Apex Court in the case of **Krishnan Gopal Sharma & Anr. v. Government of N.C.T. of Delhi**, 1996 (2) Crimes 218 (SC).

5. The learned A.P.P., appearing for the State, though tried to oppose the submission made by learned counsel for the applicant but, ultimately, left it to the discretion of the Court.

6. The Apex Court in the case of **Krishna Gopal Sharma** (supra) has observed as under:

> "11. It, however, appears to us that even if the complainant is accepted to be correct, the only offence committed by the appellants

amounts to technical violation of the mandate of Rule 47 for adding saccharin to the extent of 2000 and 2450 ppm in the Chutki Pan Masal and Mouth Freshner. Such addition of saccharin cannot be held to be injurious to health because, considering later findings on research and analysis on the effect of saccharin on human system, addition of saccharin to the extent 8000 ppm in Pan Masala has been allowed by amending Rule 47. The articles sold are not alleged to be injurious to health and such allegations, even if made, cannot be accepted. There is no allegation that any other injurious substance was added to the articles sold making them potentially health hazards. It is also not the case that Pan Masala and Mouth Freshner were of inferior quality and sub-standard. In a case like this, the offence committed is on account of technical violation of Rule 47. It should be emphasised that strict adherence to Prevention of Food Adulteration Act and Rules framed thereunder should be insisted and enforced for safeguarding the interest of consumers of articles of food. In the Constitution Bench decision in Tejani's case (supra) it has been indicated that in order to prevent unmerited leniency in the matter of awarding sentence for an offence under the Prevention of Food Adulteration Act, the legislature by amendment had incorporated the provision of minimum sentence. But it has also been indicated that the Court, for adequate and special reasons, may bring down the minimum sentence. The Constitution Bench has also observed that all violations of provisions of the Act and Rules need not be treated alike because "there are violations and violations". In the special facts of these cases, it appears to us that a deterent punishment of imprisonment is not called for and imposition of fine will meet the ends of justice. The criminal cases were initiated on the basis of samples taken in 1987. The accused appellants have already faced the ordeal of criminal trials for a number of years. In the aforesaid circumstances, further agony of criminal trials need not be prolonged. Conclusion of the criminal cases will also save time and expenditure of the respondent.

> 12. In that view of the matter, we direct for quashing the criminal cases in question on payment of costs at Rs.7,500/- in each of these appeals as in our view, on conviction of the appellants in the criminal cases initiated against them, such fine would have met the ends of justice. The appeals are accordingly disposed of."

7. In the aforesaid backdrop, turning to the facts of the present case, the applicant is exonerated of the offences committed under the substantive sections. However, he has been convicted for the offence of contravening rule 50(5) punishable under section 16 of the Prevention of Food Adulteration Act which deal with conduct of business in absence of licence. The conduct of business in absence of licence, in my view, is a technical breach. Looking to the peculiar facts of the case that the applicant has closed down his business and has become old and that there is no other member to look after the affairs of his family, the submission made by learned counsel for the applicant to quash the punishment by increasing the amount of fine deserves acceptance. Thus, deterent punishment of imprisonment is not called for and imposition of fine will meet the ends of justice. The criminal prosecution against the applicant was initiated on the basis of the samples

taken in the year 1999. The applicant- accused has already faced the ordeal of criminal prosecution for almost 8 years. In the aforesaid circumstances, further agony of criminal trial need not be prolonged.

8. In the above view of the matter, I direct for quashing the impugned orders to the extent it imposes sentence to suffer simple imprisonment for three months and enhance the amount of fine from Rs.500/- to Rs.10,000/-, in default to suffer simple imprisonment for three months.

9. The revision application is disposed of accordingly with no order as to costs.

JUDGE